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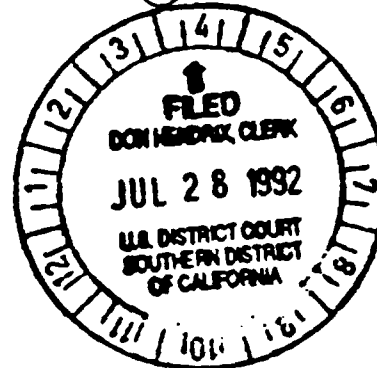
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

No. CIV. 90 0913B

ARTHUR DICELLO and ROBERT
GLOEDE,
Defendants.

PARTIAL CONSENT DECREE

WHEREAS, the United States of America, on behalf of the
Administrator of the Environmental Protection Agency ("EPA"), has
filed a complaint ("the complaint") herein against Defendants
Arthur Dicello and Robert Gloede, pursuant to Section 107(a) of
the Comprehensive Environmental Response, Compensation, and
Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C.

DEPARTMENT OF JUSTICE

AUG - 7 1992

1 § 9607(a), for recovery of the costs incurred by the United
2 States in responding to the alleged release and threatened
3 release of hazardous substances at the California Creative
4 Dynamics, Inc. site, located at 411 Raven Street, San Diego,
5 California; and

6 WHEREAS, Arthur DiCello denies liability; and

7 WHEREAS, the United States and Arthur DiCello agree that
8 settlement of the dispute between them herein without costly and
9 protracted litigation is in the public interest; and

10 WHEREAS, Arthur DiCello, by and through his representatives,
11 has agreed to the execution of this Partial Consent Decree in
12 final settlement of the claims against him alleged by the United
13 States in the complaint;

14 NOW, THEREFORE, without trial, adjudication or admission of
15 any issue of law, fact, or responsibility by Arthur DiCello,

16 IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

17 I. DEFINITIONS

18 The following definitions shall apply to this Decree:

19 A. The "California Creative Dynamics, Inc. site" is the
20 parcel of land on which EPA's response action took place, and is
21 located at 411 Raven Street, at the corner of Raven and Lockridge
22 Street, San Diego County, San Diego, California, and includes any
23 buildings and equipment located at the site.

24 B. "CERCLA" means the Comprehensive Environmental Response,
25 Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et
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1 seq., as amended by the Superfund Amendments and Reauthorization
2 Act of 1986, Public Law 99-499.

3 C. The "Effective Date" of this Decree shall be the date
4 upon which it is signed collectively by the United States and
5 Defendant Arthur DiCello.

6 D. The date of "Entry" of this Decree shall be the date it
7 is signed by the Court.

8 E. The term "days" shall mean calendar days.

9 F. Terms not otherwise defined herein shall have their
10 ordinary meaning unless defined in Section 101 of CERCLA, 42
11 U.S.C. § 9601, or in the National Contingency Plan ("NCP"), 40
12 C.F.R. Part 300, in which case, the definition in CERCLA or the
13 NCP shall control.

14 G. The "purchase price" shall mean the total sum paid by the
15 buyer(s) for the California Creative Dynamics, Inc. site, to
16 Defendant DiCello, or for Defendant DiCello's direct or indirect
17 benefit, including but not limited to, the contract price, any
18 commissions, fees, charges, expenses, taxes, deferred payments,
19 mortgages, leases or options of whatever kind and however paid.

20 II. JURISDICTION

21 The parties agree that this Court has jurisdiction over the
22 subject matter of this action and has personal jurisdiction over
23 Defendant Arthur DiCello pursuant to 42 U.S.C. § 9613(b) and 28
24 U.S.C. §§ 1345 and 2201. Defendant waives any objection he may
25 have to venue in this Court. For purposes of entering and
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1 enforcing the provisions of this Partial Consent Decree, the
2 Complaint states a claim upon which relief can be granted.

3 III. PARTIES BOUND

4 This Partial Consent Decree shall be binding upon the United
5 States on behalf of EPA, and upon Defendant Arthur DiCello, his
6 heirs, agents, successors in interest and assignees.

7 IV. REIMBURSEMENT FOR RESPONSE COSTS

8 A. Arthur DiCello shall pay the sum of \$450,000 (Four
9 Hundred and Fifty Thousand Dollars) to the United States for
10 reimbursement of response costs incurred by the United States
11 with respect to the California Creative Dynamics, Inc. site up to
12 and including the effective date of this decree. Payment shall
13 be made directly from escrow from the proceeds of the sale of the
14 California Creative Dynamics, Inc. site. Provided, however, that
15 if the purchase price for the California Creative Dynamics, Inc.
16 site is in excess of \$1.6 million (One Million Six Hundred
17 Thousand Dollars), the Defendant DiCello shall pay the United
18 States \$450,000 and 50% of the purchase price of the California
19 Creative Dynamics, Inc. site over \$1.6 million. Payment of the
20 entire sum owed the United States shall be made within six months
21 of the entry of this Partial Consent Decree. The United States
22 shall deposit with the escrow for the sale of the California
23 Creative Dynamics, Inc. site a release sufficient for recording
24 to release the Superfund lien on the California Creative
25 Dynamics, Inc. site and a dismissal with prejudice of Defendant
26 Arthur DiCello in this action, case number CIV 90-0913B. The

1 lien release and dismissal shall not be released from escrow for
2 recording and filing until payment of the entire sum owned the
3 United States has been made to the United States.

4 If payment is not made within six months of the entry of
5 this Partial Consent Decree, then there shall be no obligation on
6 the part of Plaintiff herein and Defendant Arthur DiCello under
7 this Partial Consent Decree and this Partial Consent Decree shall
8 become null and void and the parties shall retain their rights
9 under the litigation. Payment shall be made by certified or
10 cashier's check to the "EPA Hazardous Substance Superfund" and
11 shall be remitted to EPA Region IX, Attention: Superfund
12 Accounting, P.O. Box 360863M, Pittsburgh, PA 15251. The
13 transmittal of such payment shall reference the California
14 Creative Dynamics, Inc., site and shall be accompanied by
15 correspondence containing the following identifying information:
16 United States v. Arthur DiCello, et al, DOJ Ref. No., Civil
17 Action No. 90 0913B and the name and complete address of the
18 paying party. Defendant shall send copies of this correspondence
19 to Matt Strassberg, Office of Regional Counsel (RC-5) Region 9,
20 U.S. Environmental Protection Agency, 75 Hawthorne Street, San
21 Francisco, CA 94103 and to Karen Dworkin, Department of Justice,
22 P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, when
23 payment is made.

24 B. If Defendant Arthur DiCello recovers any funds from any
25 insurance policy or coverage concerning California Creative
26 Dynamics, Inc., Arthur DiCello shall receive the first Fifty-Five

1. Thousand Dollars (\$55,000) and any cost expended in pursuit of
2. such recovery. All additional funds recovered by DiCello from
3. insurance over such amounts shall be divided equally between
4. Arthur DiCello and the United States for reimbursement of
5. response costs incurred by the United States with respect to the
6. California Creative Dynamics, Inc. site. Payment shall be made
7. in accordance with the provisions of Section IV.

8. Defendant Arthur DiCello shall notify the United States in
9. writing within ten (10) days of any judgment obtained by
10. Defendant DiCello awarding him recovery from any insurance policy
11. or coverage concerning California Creative Dynamics, Inc. or any
12. settlement with respect to any insurance policy or coverage
13. concerning California Creative Dynamics, Inc. Defendant shall
14. include with the notification a copy of the judgment or
15. settlement setting forth the full amount of his recovery and
16. documentation of any sums he claims were expended in that
17. recovery.

18. C. Nothing herein shall be construed to limit the
19. authority of the United States to seek such other relief, in law
20. or in equity, available to it for Defendant DiCello's violation
21. of this Partial Consent Decree, and the United States expressly
22. reserves all such remedies available to it to enforce the
23. provisions of this Partial Consent Decree.

24. D. Defendant DiCello shall bear his own costs and
25. attorneys fees in this matter.
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V. EFFECT OF PARTIAL CONSENT DECREE

A. Upon receipt of the payment set forth in Paragraph IV. A above, the United States agrees to dismiss with prejudice all claims in this action against Arthur DiCello.

B. Nothing in Paragraph V.A. or in this Partial Consent Decree shall release the Defendant DiCello from liability for response costs, if any, incurred by the United States or by any other Defendant after the Effective Date of this Decree.

C. This Partial Consent Decree shall not bind any person or legal entity other than the United States, and Arthur DiCello and his agents, assignees and successors in interest.

D. Defendant DiCello hereby agrees not to sue the United States for any liability for action taken and expenditures made by the United States, its agents and employees, prior to the Effective Date of this Decree in responding to the alleged release or threatened release of hazardous substances into the environment from the California Creative Dynamics, Inc. site. Further, Defendant DiCello agrees not to assert any causes of action, claims, or demands against the United States for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, including claims pursuant to Sections 106(b)(2), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611 and 9612, or assert any other claims or demands, for sums paid in settlement of response costs or arising from any activity performed or expenses incurred pursuant to this litigation or

1 under this Partial Consent Decree or arising from response
2 activities at the site.

3 E. Nothing in this Partial Consent Decree shall be deemed
4 to constitute preauthorization of a CERCLA claim within the
5 meaning of 40 C.F.R. § 300.25(d).

6 VI. RESERVATION OF RIGHTS

7 Except as provided in Paragraph V. of this Decree, the
8 United States reserves all claims, demands, and causes of action,
9 past or future, judicial or administrative, in law or equity,
10 including but not limited to, cost recovery and injunctive relief
11 and natural resource damages, against any other person or entity,
12 including the Defendant DiCello. Nothing contained herein,
13 except as provided in Paragraph V.A., of this Decree shall in any
14 way limit or restrict the response and enforcement authority of
15 the United States to initiate appropriate action, either judicial
16 or administrative, against Arthur DiCello or against any other
17 person or entity not a party to this Decree under Sections 104,
18 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607. Any
19 claim, cause of action or defense which the United States or
20 Arthur DiCello may have against any other person or entity not a
21 party to this Decree, including but not limited to, claims for
22 indemnity or contribution, is expressly reserved.

23 Except as expressly provided in Paragraph V., nothing
24 contained in this Decree shall be construed to limit the right of
25 the United States to take judicial or administrative action to
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1 enforce federal or state environmental laws or this Partial
2 Consent Decree.

3 VII. RETENTION OF JURISDICTION

4 The Court shall retain jurisdiction of this matter to
5 enforce the terms and conditions of this Partial Consent Decree.

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7 VIII. NOTICE TO PARTIES

8 Any notice required under this Partial Consent Decree shall
9 be sent by regular mail to Arthur DiCello at the address set
10 forth on his signature page attached hereto. Notice to EPA and
11 the Department of Justice shall be by registered mail and shall
12 be to the addresses listed in Paragraph IV. above.

13 IX. MODIFICATION

14 No modification shall be made to this Partial Consent Decree
15 without written notification to and written approval of the
16 parties hereto and the Court. The notification required by this
17 paragraph shall set forth the nature of and the reasons for the
18 requested modifications. No oral modification of this Partial
19 Consent Decree shall be effective.

20 X. DECREE AND COUNTERPARTS

21 This Partial Consent Decree may be executed in several
22 counterparts and as executed shall constitute one agreement
23 binding on all the parties hereto, notwithstanding that all the
24 parties are not signatories of the original on the same
25 counterpart.
26

FOR THE DEFENDANT:

Date:

8-23-91


ARTHUR DICELLO

c/o Richard D. Bregante
Duke, Gerstel, Shearer
& Bregante
101 W. Broadway, Sixth Floor
San Diego, CA 92101

FOR THE PLAINTIFF:

Date:

11.27.91


DANIEL W. MCGOVERN

for Regional Administrator
EPA, Region 9

NANCY MARVEL
Regional Counsel
EPA, Region 9

Date:

10/30/91


MATT STRASSBERG

Office of Regional Counsel
EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94103

WILLIAM BRANIFF
United States Attorney

Date:

4/28/92


STEPHEN V. PETIX

Assistant United States Attorney
940 Front Street
San Diego, California 92189
(619) 557-5662

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4 Date: APR 17 1992

Barry M. Hartman
BARRY M. HARTMAN
Acting Assistant Attorney General
Environment and Natural Resources
Division

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6
7
8 Date: _____

Karen S. Dworkin
KAREN S. DWORKIN
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-2778

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13 IT IS SO ORDERED, ADJUDGED AND DECREED

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15 DATED: JUL 21 1992

Rudi M. Brewster
UNITED STATES DISTRICT JUDGE
DISTRICT OF CALIFORNIA